

W.P(MD)Nos.29573 to 29578 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 18.07.2025

Pronounced on : 02.09.2025

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

W.P.(MD)Nos.29573 to 29578 of 2024

and

WMP(MD).Nos.24966, 24967, 24957,

24958, 24968,24970, 24965, 24969,

24984, 24963 and 24964 of 2024 and 4067 of 2025

W.P(MD)No.29573 of 2024

- 1.D.Chandirasegar
- 2.S.Sankara Subramanian
- 3.P.K.Adhijaganathan
- 4.K.Mohan
- 5.L.N.Sekar
- 6.R.Sethuraman
- 7.V.Ragu
- 8.G.Madhuramani
- 9.G.Vijayaraghavan
- 10.S.Krishnamurthy
- 11.A.Sampath
- 12.K.Kishore Kumar
- 13.H.Mohamed Anvar
- 14.T.Jayaraman
- 15.R.I.Peter Irudayaraj
- 16.Rajasekar Natarajan



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17.S.Natarajan

18.M.Kulandai Raj

19.V.Shanmugasundaram

20.K.Raja

21.R.Prabakhar

22.C.Ramasami

23.P.Pandiarajan

24.B.Muthukumar

25.R.Selvaraj

26.K.Thiagarajan

27.A.Lawrence

28.K.Muthukamatchi

29.K.Raghunathan

30.R.Rajagopal

31.P.Thirunavookarasu

32.Annamalaichamy Chinnasamy

33.R.Selvanathan

34.J.Sekar

35.M.Sivachidambaram

36.V.Jeevanna

37.J.Deenathayalan

38.D.K.Janakiraman

39.A.L.Rajagopal

40.E.Murugan

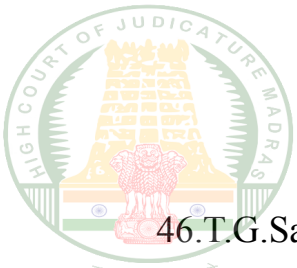
41.M.Rajavel

42.K.Arunachalam

43.T.Kaliramakrishnan

44. G.Parasuraman

45.M.Namachivayam



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46.T.G.Santharam

47.S.Rajendran

....Petitioners

Vs.

1.Union of India,
Ministry of Labour and Employment,
Represented by Secretary,
Shram Shakti Bhawan, Rafi Marg,
New Delhi - 110 001.

2.The Central Provident Fund Commissioner,
The Employees' Provident Fund Organisation
Ministry of Labour and Employment,
Govt. of India, Bhavishya Nidhi Bhawan,
14, Bhikaji Cama Place, New Delhi - 110 066.

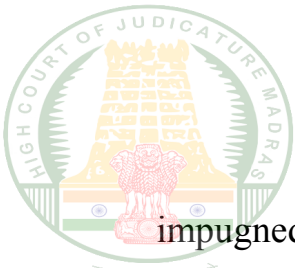
3.The Regional Provident Fund Commissioner,
The Employees' Provident Fund Organisation,
Ministry of Labour and Employment,
No.37, Royapettah High Road,
Azad Nagar, Royapettah, Chennai

4. The Regional Provident Fund Commissioner,
The Employees' Provident Fund Organisation,
Ministry of Labour and Employment,
P.B.No.588, Sree Complex 'D' Block
No.18, Madurai Road
Tiruchirappalli 620 008

5.Director (HR)
BHEL
“BHEL HOUSE”
Siri Fort
New Delhi 110 049

...Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India,
to issue a **Writ of Certiorarified Mandamus**, calling for the records in



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impugned Circular File No.Pension/VI/POHW/2024-24/efile-951977/09 dated 18.01.2025 issued by the 2nd respondent and quash the 2nd issue titled exempted establishments eligibility for POHW to be based on Trust Rules as contrary to the Final Judgment of the Hon'ble Supreme Court of India in EPFO Vs.Sunil Kumar dated 04.11.2022 and the consequential rejection orders of the 4th respondent in CB/TRY/5249/POHW/2025 dt.06.02.2025 and quash the same as illegal and unlawful and consequently direct the respondents 2 to 4 to settle the respective claims of enhanced higher monthly pension of petitioners U/s.17A of EPS-95 and respectively pay the enhanced higher monthly pension on the basis of the respective petitioners last drawn salary (Basic Pay plus DA) with effect from their respective date of entitlement in respect of respective petitioners along with the arrears after adjusting the monthly pension already paid to the respective petitioners on ceiling of salary and other receivables from the respective petitioners and to pay the monthly higher pension from the succeeding month and pass such other order or Direction(s) as this Court may deem fit and proper in the circumstances of the case and thus render justice.

(Prayer amended vide Court order dated 03.07.2025)

For Petitioners : Mr.G.Srinivasan

For Respondents : Mr.D.Kesevan for R1

: Mr.N.Dilip Kumar for R2 to R4

Mr.M.Raghuvaran Gopalan for R5

COMMON ORDER

These six writ petitions have been filed by 86 former employees of BHEL (Bharat Heavy Electricals Limited), Trichy challenging the orders issued by

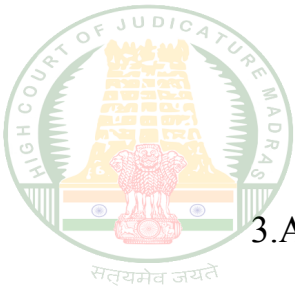


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EPFO (Employee's Provident Fund Organisation) to the individual employees on 21.03.2024 wherein the EPFO has recalled a demand notice issued by them for payment of contribution along with applicable interest for higher pension was recalled. The petitioners have also challenged a circular issued by EPFO on 18.01.2025 wherein the exempted establishments were not permitted to amend the Trust Rules with retrospective effect so as to bring the Trust Rules in consonance with the Hon'ble Supreme Court in Sunil Kumar case. The petitioners have also challenged the order of EPFO dated 06.02.2025 wherein the joint option request submitted by the employees to avail the benefits of higher pension have been rejected primarily relying upon the Trust Rules applicable to the exempted organisation namely BHEL, Trichy.

(A)Factual Background:

2.The BHEL, Trichy is admittedly an establishment exempted under Section 17 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, from the purview of the Employees' Provident Funds Scheme, 1952. In view of the exemption, the Provident Funds Scheme is being administered by a Trust. The terms and conditions of the exemption are governed by the Appendix 'A' as found in Paragraph 27-AA of the Employees' Provident Funds Scheme 1952. However, the employees of the BHEL are continued to be governed by the Statutory Employees' Pension Scheme, 1995.

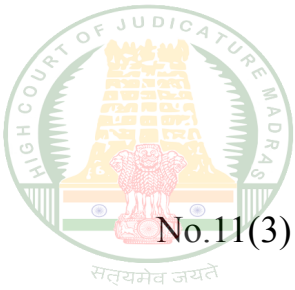


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3.As per Section 6 of the Employees' Provident Funds and Miscellaneous Provisions Act, the employee is expected to make his contribution of 12% of the basic wages and the Dearness Allowance and the employer is mandated to contribute an equal sum. However, this mandate is subject to the wage ceiling to be fixed from time to time by notification of the Central Government. If the employee exceeds the wage ceiling, though he would continue to be a member of the scheme, the contribution made by the employer and the employees would be restricted to the wage ceiling fixed by the Central Government.

4.Paragraph No.26(6) was introduced w.e.f. 01.11.1990, in the Employees' Provident Funds Scheme, 1952, wherein an option was given to the employer and the employees to mutually agree to remit contribution of actual wages(instead of ceiling wages).

5.When the Employees' Provident Fund Scheme, 1952, came into force, there was no provision in the enactment for providing pension. For the first time, an amendment was introduced w.e.f.16.11.1995, by introducing Section 6-A under the Employees Provident Fund Act, which provided for Employees' Pension Scheme. As per the Section 6-A, 8.33% of the employers contribution would be diverted to the Pension Scheme. The employee would be eligible for various types of pension including superannuation pension. Paragraph No.11 of the Pension Scheme dealt with determination of pensionable salary. Paragraph



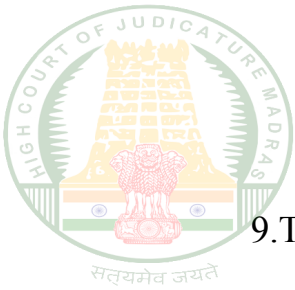
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No.11(3) has dealt with the maximum pensionable salary which was limited to Rs.5,000/-. Later it was enhanced to Rs.6,500/-, w.e.f.01.06.2001.

6.In the year 1996, a notification was issued inserting the proviso to paragraph 11(3) w.e.f.16.03.1996. As per the said proviso, similar to paragraph No.26(6) of the Provident Fund Scheme, the employer and the employees were given an option to remit contribution on actual wages instead of ceiling wages.

7.Some of the employees who had not exercised their option as provided under the proviso to Paragraph 11(3) (unamended) and who were about to retire in the year 2005, had approached the Employees' Provident Fund Organisation exercising their joint option seeking higher pension based upon higher contribution. This was rejected by the authorities concerned. The Hon'ble Supreme Court in a judgment reported in **(2018) 14 SCC 809, (R.C.Gupta Vs. Regional Provident Fund Commissioner)** has held that when no cut off has been fixed under the proviso to Paragraph 11(3), the authorities cannot reject the joint option application. The Hon'ble Supreme Court has further found that when the employer has already deposited 12% of the contribution on the basis of actual wages, there cannot be any difficulty in adjustment of the accounts by diverting 8.33% from the Provident Fund to the Pension Scheme.

8.By way of notification dated 22.08.2014, the proviso to paragraph 11(3) was deleted and paragraph 11(4) was introduced w.e.f.01.09.2014.



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9.This notification dated 22.08.2014, was challenged before the High Court of Kerala at Ernakulam and in a judgment reported in **2018 SCC Online Ker. 13710 (P.Sasikumar Vs. Union of India)**. The Division Bench of Kerala High Court was pleased to set aside the said notification and proceeded to hold that the employee shall be entitled to exercise the option stipulated in paragraph No.26 of the Employees' Provident Fund Scheme without being restricted in doing so by insistence on the cut off date. The said order of the Division Bench of the Kerala High Court was followed by the Rajasthan and the Delhi High Courts also. The order of all the three High Courts were put to challenge before the Hon'ble Supreme Court.

10.The Hon'ble Supreme Court in a judgment reported in **(2023) 12 SCC 701, (Employees' Provident Fund Organisation and another Vs. Sunil Kumar B and Others)** was pleased to set aside the judgment of the High Courts and upheld the validity of the notification dated 22.08.2014. After reading down certain provisions of the scheme, the Hon'ble Supreme Court was also pleased to issue various directions in Paragraph Nos.50.2 to 50.11, in the said judgment.

11.The sum and substance of the directions of the Hon'ble Supreme Court are as follows:-

a)Notification dated 22.08.2014, shall be equally applicable to the employees of the exempted establishment in the same manner as employees of



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the regular establishment;

b)Even though the employee has not exercised his option under the unamended provision to Paragraph 11(3), he would be entitled to exercise his option under the amended paragraph 11(4) of the scheme by way of joint option covering pre-amended paragraph 11(3) and amended paragraph 11(4);

c)The employee who had retired prior to 01.09.2014, without exercising option under unamended paragraph 11(3) of the Pension scheme would not be entitled to the benefits of the judgment. However, the benefits of the judgment can be invoked by those who have retired even prior to 01.09.2014, provided they have exercised their option under the unamended paragraph 11(3);

d)Since uncertainty with regard to the validity of the notification dated 22.04.2014, was prevailing in view of the judgment of the High Courts, the Hon'ble Supreme Court was pleased to extend the time for a period of 4 months from the date of judgment, for exercising option under the amended paragraph 11(4) of the scheme; and

e)The Hon'ble Supreme Court was pleased to confirm the view expressed by the Hon'ble Supreme Court in **(2018) 14 SCC 809** to the effect that the unamended proviso to paragraph 11(3) did not provide for any cut off date.

12.The Judgment of the Hon'ble Supreme Court reported in **(2023) 12 SCC 701** was delivered on 04.11.2022, wherein the 4 months window period



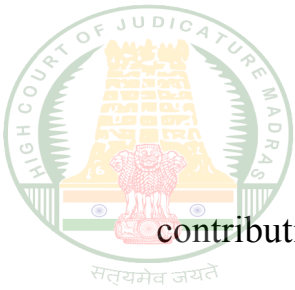
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was granted for the employees to exercise the joint option. The period expired on 04.03.2023. Since lakhs and lakhs of applications were presented for recording joint option, the Employees' Provident Fund Organisation was pleased to extend the time till 30.09.2023, and later it was extended upto 31.12.2023. It was further extended till 31.05.2024. Finally, it was extended upto 31.01.2025.

13.In the light of the above said factual and legal position, let us consider the facts of the present case.

(B)Facts of the case:

14.The petitioners herein have retired from BHEL, Trichy after 01.09.2014. The establishment is an exempted establishment from the purview of the Employees' Provident Fund Scheme. As per the paragraph No.8(D) of the Trust Rules, the employer and the employees had agreed for payment of contribution to the Provident Fund on the actual wages instead of ceiling wages. This Trust Rule was in consonance with the condition No.10 in appendix 'A' of the Rule 27-AA of the Employees' Provident Funds Scheme, 1952. As per the above said condition, in case, the statutory scheme is amended and it is more beneficial to the employees, it becomes automatically applicable to the employees without any formal amendment of the Trust Rules. Therefore, when Paragraph No.26(6) was introduced, providing for remittance of the



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contribution on higher wages, based on joint option, it became automatically applicable to the employees without even there being an amendment in the Trust Rules.

15.The petitioners herein have admittedly attained superannuation after 01.09.2014, and they were issued Pension Payment Orders and they are receiving pension from the next month of their superannuation. Pursuant to the judgment of the Hon'ble Supreme Court reported in **Sunil Kumar** case, the employer and the employees have presented the joint option application to the Employees' Provident Fund Organisation. This Joint option application has been rejected under the impugned order dated 06.02.2025 on the following grounds:-

a)the Trust Rules especially Rule 11(b) points out that 8.33% of the employee contribution shall be diverted to the pension fund. However, when the pay of the member exceeds Rs.15,000/- the contribution payable by the employer shall be limited to his pay of Rs.15,000/- only. The balance of the employer contribution shall be credited to the member's individual account. The Trust Rule has further pointed out that the establishment shall not be liable to make any contribution in respect of the voluntarily contribution, if any, made by the member to the Provident Fund. Therefore, when the Trust Rules do not permit/prohibit the employer from diverting 8.33% on the actual wages and limit the liability of the employer to the ceiling wages with regard to the pension fund, the present joint option application cannot be accepted; and



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b)the Head Office of the Employees' Provident Fund Organisation has issued a clarification on 18.01.2025. As per the said clarification, the Trust Rules of the exempted establishment have to be read in consonance with the Hon'ble Supreme Court in **Sunil Kumar** case. Therefore, if the Trust Rules do not provide for higher contribution to the pension scheme, the joint option application cannot be accepted.

16.Challenging the said order, the present Writ Petition has been filed.

(C)Submission of the Counsels appearing on either side:

17.According to the learned Counsel appearing for the Writ Petitioners, the Trust Rules are applicable only for the Provident Fund Scheme for which exemption has been granted under Section 17 of the Act. Therefore, the Trust Rules cannot be cited as a legal embargo for conferring benefits under the Employees' Pension Scheme especially when no exemption has been granted from the Pension Scheme as contemplated under Paragraph No.39 of the Pension Scheme.

18.The learned Counsel appearing for the petitioners has further submitted that both the employer and the employees have already exercised their joint option as contemplated in paragraph 26(6) of the Employees' Provident Funds Scheme and they are remitting contribution to the Trust on actual wages instead of ceiling wages. Therefore, as pointed out by the Hon'ble Supreme Court in the judgment reported in **(2018) 14 SCC 809**, it is only an adjustment of accounts, which in turn, would be beneficial to the employees. He

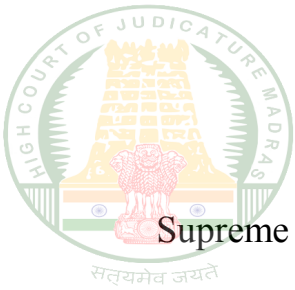


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has further pointed out that the Hon'ble Supreme Court in ***R.C.Gupta case*** has also dealt with the transfer of funds in paragraph Nos.45 and 50.2 of the said judgment.

19.The learned Counsel appearing for the writ petitioners has further submitted that the joint option applications have been presented by the employees within the time limit fixed by the Hon'ble Supreme Court and the time extended by the Employees' Provident Fund Organisation. In such circumstances, the authorities cannot contend that the joint option applications are not in consonance with the judgment of the Hon'ble Supreme Court in ***Sunil Kumar case***.

20.The learned Counsel appearing for the Writ Petitioners has further submitted that as per the judgment of the Hon'ble Supreme Court in ***R.C.Gupta case***, there was no time limit for exercising an option under unamended paragraph 11(3) of the Pension Scheme. This finding has been confirmed by the Hon'ble Supreme Court in ***Sunil Kumar case***. The Hon'ble Supreme Court has further pointed out that even if an employee has not exercised his option under the unamended paragraph No.11(3) of the Pension Scheme, he can now exercise his option (consolidated option including unamended paragraph No.11(3) and amended paragraph 11(4)) within the window period granted by the Hon'ble

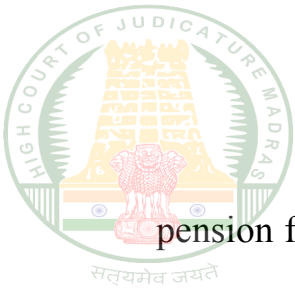


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Supreme Court. In such circumstances, the authorities were not right in relying upon the circular issued by the Head Office, which is in clear violation of the judgment of the Hon'ble Supreme Court in ***Sunil Kumar case***. Hence, he prayed for allowing the Writ Petition.

21.Per contra, the learned Counsel appearing for the respondents has submitted that the 5th respondent establishment is an exempted establishment and they are governed by the Trust Rules and not by the Provident Fund Scheme. The Trust Board consists of the Employer and the Employees. They have mutually agreed in paragraph No.11(b) of the Trust Rules that the employer's contribution would not exceed the ceiling limit. In such circumstances, any joint option presented by the employer and the employees would clearly be in violation of the Trust Rules. It has been mutually agreed upon by them. Merely because exemption has not been granted to the establishment under the Pension Scheme, it will not permit the employer and the employees to violate the Trust Rules which were framed as per the paragraph No.27-AA of the Provident Fund Scheme.

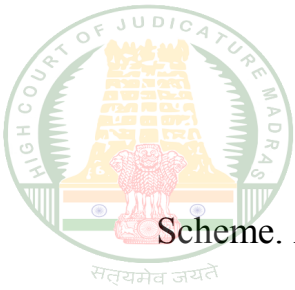
22.The learned Counsel appearing for the respondents has further submitted that they have retired after 01.09.2014, before exercising the joint option, they have exited from the membership by withdrawing the entire Provident Fund amount from their accounts. In fact all of them are receiving



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pension from the next month of their superannuation. Thereafter, the petitioners have chosen to file the joint option. Hence, there is no possibility of transfer of funds from the Trust to the Employees' Pension Fund Organisation for crediting it to the Pension Scheme.

23.The learned Counsel appearing for the respondents has further submitted that the judgment of the Hon'ble Supreme Court in ***Sunil Kumar case*** could be invoked only in a case, where the funds are still available in the Trust of the exempted establishment, so that it can be transferred to the Pension Scheme. In all these cases, the funds have already been withdrawn by the employees concerned along with the accrued interest and they have started receiving pension also. He has also relied upon the paragraph No.6-A of the Employees' Pension Scheme, 1995, and would contend that the membership under the scheme can be continued only till the member has attained the age of 58 years or he avails the withdrawal benefits or the pension is vested in him in terms of the paragraph No.12 of the scheme, whichever is earlier. In the present case, pension has got vested with all the employees even before they had exercised their joint option and therefore, they have got exited from the membership of the Employees' Provident Fund Scheme. Therefore, they have to be treated on par with those who have got retired prior to 01.09.2014, without exercising the option under the unamended paragraph No.11(3) of the Pension



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Scheme. According to him, paragraph No.50.7 of the ***Sunil Kumar case*** would be applicable to those employees also and they would not be entitled to invoke the benefits of the said judgment.

24.The learned Counsel appearing for the respondents has further submitted that crediting/remitting more amounts to the provident fund would be beneficial to them and therefore, they did not seek amendment of the Trust rules, even after the proviso was introduced to paragraph No.11(3) of the Pension Scheme w.e.f.16.03.1996. When the employees have opted in favour of the larger provident fund over larger pension, they are bound by the choice exercised by them. He has further pointed out that they cannot be permitted to alter the commitment retrospectively either by amending the exempted Provident Fund Trust Rules or by exercising fresh option which is clearly inconsistent with the existing Provident Fund Trust Rules.

25.The learned Counsel appearing for the respondents has further submitted that when the employees have withdrawn the entire Provident Fund amount and started receiving pension, the Provident Fund Organisation cannot be expected to receive the higher contribution belatedly, especially from the exited members in order to pay higher pension. This is nothing but attempting to pay the insurance premium after the accident has taken place.

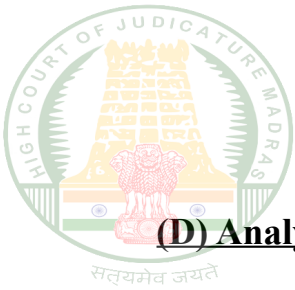
26.The learned Counsel appearing for the respondents has further



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submitted that the higher contribution amount based upon actual wages has not been received by the Employees' Provident Fund Organisation in time and it is not in the hands of the Trust also. Therefore, the employees cannot put the clock back, pay higher contribution and seek higher pension which would cause huge financial loss to the Provident Fund Organisation which handles the public fund. The remittance of the contribution by the employer and the employees are invested in securities and out of the profit earned, interest is paid and pension is also released. When lakhs and lakhs employees have exited from the membership of the scheme, after receipt of the Provident Fund amount, with accrued interest and started receiving pension, suddenly they cannot become members again and attempt to pay higher contribution. The payment of higher contribution on a future date would not in any way set off the losses, that are likely to occur to the Employees' Provident Fund Organisation by entertaining the joint option. The learned Counsel appearing for the respondents has further submitted that many of them have submitted their option beyond 31.01.2025, and therefore, even assuming without admitting that they are eligible for higher pension, their applications are liable to be rejected. Hence, he prayed for dismissal of the Writ Petition.

27.I have carefully considered the submissions made on either side and perused the materials available on record.



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(D) Analysis:

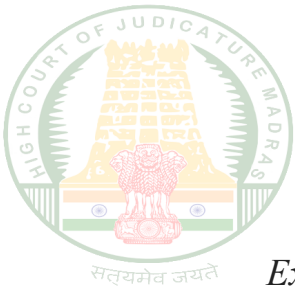
28.The petitioners herein are the employees of an exempted establishment under Section 17 of the the Employees' Provident Funds and Miscellaneous Provisions Act, 1952. The exemption is restricted to the Employees' Provident Funds Scheme and they were continued to be governed by the Statutory Pension Scheme. The respondents have rejected the joint option application primarily on the ground that the joint option application is not only contrary but is in violation of the Trust Rules framed for an exempted establishment.

29.Rule 10 and 11 of the Trust Rules of the 5th respondent establishment are extracted as follows:-

Rule 10: Contribution of Members:-

a) Every member shall subscribe to the Fund every month a sum equal to 12% of the total of his monthly basic pay, D.A. and retaining allowance, if any.

b) Every member contributing to the Provident fund under sub-rule (a) herein may, if so desires, contribute voluntarily to the provident fund an amount exceeding 12% of his basic pay and D.A. A member desiring to contribute to the Provident Fund an amount exccoding 12% of his basic pay and DA per month shall submit an application in the form set out in Annexure 'E'. A member who is permitted to contribute to the provident fund an amount exceeding 12% of his total monthly basic pay and D.A. shall be allowed to change the rate of voluntary contribution on his applying for such change in contribution, only at intervals of a minimum period of one year. Such a change in the rate by way of voluntary contribution shall only be given effect to from the beginning of an accounting period of the fund.



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Explanation: The term D.A. shall include the cash value of food concession and retaining allowance, if any.

c) Each monthly contribution to the Fund shall be calculated to the nearest rupee that is 50 paise or more shall be counted as the next higher rupee and any fraction of a rupee less than 50 paise shall be ignored.

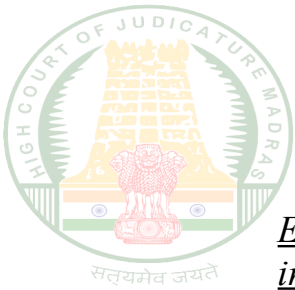
d) The establishment shall every month deduct from the emoluments of the member, such sum as may be required under sub-rule (a) and (b) herein and shall transfer every month not later than 15th of the following month to the Board of Trustees. The money so deducted shall be credited to the member's individual account.

e) No subscription shall be recovered from an employee for such period, as he is absent from duties without pay.

Rule 11: Employers' contribution to the Fund:-

a) The employer shall not later than the fifteenth day of the succeeding month, in respect of each of the members of the fund, pay to the trustees as employers' contribution to the Fund a sum equal to the total of the member's compulsory contribution under Rule 10(a) hereinbefore.

(b) From and out of the contribution payable by the employer each month under Rule 11 above, a part of contribution representing 8.33% of the Employees pay shall be remitted by the employer to the Employee's Pension Fund within 15 days of the close of every month by a separate bank draft of cheque on account of Employee's Pension Fund contribution in such manner as may be specified in this behalf by the Regional Provident Fund Commissioner. The cost of the remittance, if any, shall be borne by the employer. Provided that where the pay of the member exceeds Rs.15000/- per month the contribution payable by the employer be limited to the amount on his pay of Rs.15000/- only. The balance of employer's contribution after the remittance of contribution to the



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Employees' Pension Fund shall be credited to the member's individual account. The establishment shall not be liable to make any contribution in respect of the voluntary contribution, if any, made by the member to the provident fund under Rule 10(a) hereinbefore.

c) The contribution shall be calculated on the basis of the basic wages, dearness allowance (including the cash value of any food concession) and retaining allowance (if any) actually drawn during the whole month whether paid on weekly, fortnightly or monthly basis.

d) The contribution to Employees Pension Fund shall be applicable only in case the employee in question is a member of the Employee's Pension Scheme, 1995 as laid down in Para 6 of the Employee's Pension Scheme, 1995, and shall cease on the employee attaining the age of superannuation as defined in the Employees' Pension Scheme, 1995.

e) Provided further that if the employee continues in service even after the date of superannuation the entire contribution payable by the employer as per Rule 11(a) shall be credited to the member's account."

30. Relying upon the above said Trust Rules, the respondents have contended that the Trust Rules fixes the wage ceiling of Rs.15,000/- for the contribution of the employer and out of the said Rs.15,000/-, 8.33% shall be diverted to the pension fund. He has further pointed out that, in case, the salary of the employee exceeds Rs.15,000/-, the contribution would be limited to a sum of Rs.15,000/- only. Relying upon such clause in the Trust deed, the respondents authorities are contending that the Trust Rules prohibit making any higher contribution by the employee either to the Provident Fund account or to the Pension Scheme. Hence, the joint option application presented by the employer and employees would be in violation of the Trust Rules which has



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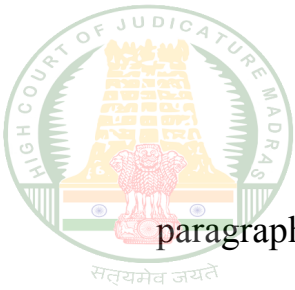
been mutually agreed by them. In view of the circular issued by the head office of the Employees' Provident Fund Organisation dated 18.01.2025, the joint option application submitted by the exempted establishment, have to consider only in the light of the Trust Rules.

31.As per the paragraph No.26(6) of the Employees' Provident Fund Scheme, the employer and the employees can exercise the joint option for payment of contribution on actual wages instead of ceiling wages. This provision is more beneficial than the Trust Rules as far as the Provident Fund Scheme is concerned.”

32.Paragraph 27-AA of the Provident Fund Scheme deals with the the terms and conditions for granting exemption to an establishment. Condition No. 10 of the Appendix 'A' is extracted as follows:-

“Any amendment to the Scheme, which is more beneficial to the employees than the existing rules of the establishment, shall be made applicable to them automatically pending formal amendment of the Rules of the Trust.”

33.In view of the above said condition, if any amendment is introduced to the Provident Fund Scheme and it is more beneficial to the employees, it becomes automatically applicable to the employees, even without a formal amendment of the Trust Rules. The respondents authorities have pointed out that unamended Trust rules which do not provide for exercising the joint option for remittance of higher contribution to the Provident Fund. As per the

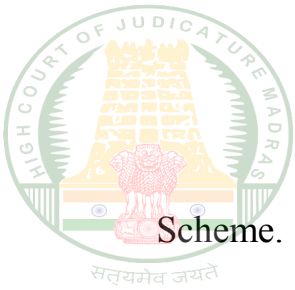


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paragraph 27-AA cited supra, even without amendment of the Trust Rules, an amendment made to the Provident Fund Scheme is automatically applicable to the members of the scheme. In fact, in the present case, admittedly, even without formal amendment of the Trust Rules, the Employees' Provident Fund Organisation had received higher contribution on actual wages from the employer and the employee. This fact is not disputed in the counter. In such circumstances, the respondents cannot rely upon the unamended Trust Rules which is clearly in violation of the statutory condition No.10 under Appendix 'A' in paragraph 27-AA of the Provident Fund Scheme.

34.The Trust has been receiving higher contribution on the actual wages (instead of ceiling wages) and the same has been credited to the Trust funds. However, in view of the non-exercising of joint option alone, 8.33% of the employer contribution(restricted to ceiling wages) was diverted to Pension Scheme. The remittance of lesser amount to the Pension Scheme by the employer was attributable only to the non-exercising of joint option and it is not traceable to the bar in the Trust Rules. Therefore, the contention of the respondents that the Trust Rules prohibit the remittance or diversion of 8.33% on actual wages to the Pension Scheme is factually incorrect.

35.That apart, the Trust rules framed under the Employees' Provident Fund Scheme cannot be cited to deny the benefits under the Employees' Pension

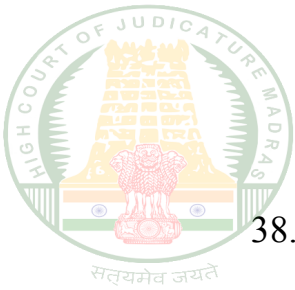


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Scheme. Admittedly, the 5th respondent establishment has not been exempted under the Employees' Pension Scheme as contemplated under Rule 39 of the said scheme. The conditions for the exemption granted to the PF Scheme cannot be invoked to deny the benefits to an employee under the Statutory Pension Scheme. The conditions imposed while granting exemption to one scheme cannot be kalideoscoped into another scheme for which no exemption has been granted under the statute.

36.It is an admitted fact that right from the beginning the establishment is governed under the Statutory Pension Scheme. The benefits of the said Statutory Pension Scheme cannot be denied citing the Trust Rules, which are applicable only to the Provident Fund Scheme. When the statute provides for a beneficial scheme(receiving higher pension based on remittance on actual wages) the same cannot be taken away from the employee unless there is a statutory bar for claiming the same.

37.Even assuming that there is a prohibition in the Trust Rules for making higher contribution (based on actual wages) to the Pension Scheme, the same could only be construed to be a contract in violation of the Statutory provision, which would be void in the eye of law. Therefore, the reliance placed upon by the respondent authorities on the Trust Rules is not legally sustainable in the eye of law.



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38.It has been further contended by the respondents that the employees have got exited from the membership of the scheme by receiving their Provident Fund amount along with interest and pension has got vested before exercising the joint option. As held by the Supreme Court in **R.C.Gupta case**, there is no time limit or cut off date for exercising an option under the unamended paragraph No.11(3) of the Pension Scheme. The Proviso dealing with the joint option in the unamended paragraph 11(3) was deleted w.e.f.01.09.2014, and new paragraph 11(4) was introduced under notification dated 22.08.2014. Immediately, the same was put to challenge before the Kerala High Court and the said Court was pleased to set aside the notification on 12.10.2018. Therefore, from 01.09.2014 till the date of allowing of the Writ Petition by the High Court of Kerala, uncertainty prevailed.

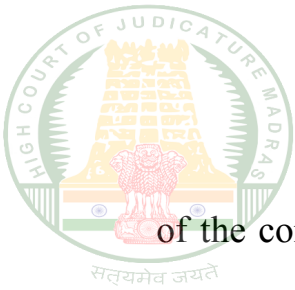
39.The notification dated 22.08.2014, was upheld by the Hon'ble Supreme Court in **Sunil Kumar case** only on 04.11.2022. Hence, till 04.11.2022, paragraph 11(4) was not in operation, in view of the fact that it was struck down by the High Court of Kerala. Therefore, non-exercising of option either under unamended paragraph No.11(3) or under amended paragraph No. 11(4) of the Pension Scheme till 04.11.2022, cannot be found fault with. As pointed out by the Hon'ble Supreme Court in paragraph No.50.5 in **Sunil Kumar case** uncertainty was prevailing from the date of notification namely,



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22.08.2014, till it was upheld by the Hon'ble Supreme Court on 04.11.2022, nearly for a period of 8 years. Only considering the above said facts, the Hon'ble Supreme Court was pleased to grant 4 months window period from 04.11.2022. The said window period has been extended by the Employees' Provident Fund Organisation, till 31.01.2025. Hence, the contention of the respondents that the employees have neither exercised their option under 11(3) nor under 11(4) before the date of superannuation and therefore, they are not entitled to the benefits of the judgment of the Hon'ble Supreme Court is not legally sustainable. The petitioners herein have admittedly attained superannuation only after 01.09.2014. Therefore, due to uncertainty that prevailed till the date of judgment of the Hon'ble Supreme Court dated 04.11.2022, they would be entitled to exercise their option within the time granted by the Hon'ble Supreme Court, that is upto 04.03.2023, and the time extended by the Employees' Provident Fund Organisation upto 31.01.2025.

40.It is further contented on the side of the respondents that the funds are not available with the Trust and therefore, the question of transferring the funds would not arise. In case, the Provident Fund has already been disbursed by the Trust to the employees, in view of the judgment of the Hon'ble Supreme Court granting window period, the employees should be permitted to re-deposit the required contribution amount. Unless such permission is granted for remittance



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of the contribution by the employees to the Pension Scheme, that would affect the compliance of the judgment of the Hon'ble Supreme Court in ***Sunil Kumar*** case in letter and spirit.

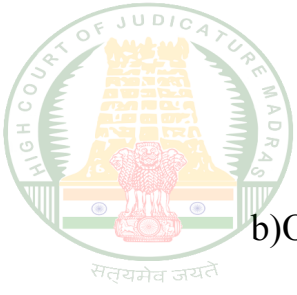
41.It is the further contention on the side of the respondents that any payment of higher pension based upon pay remittance by the employee would result in financial loss to the Employees' Provident Fund Organisation. Only after taking into consideration these aspects, the Hon'ble Supreme Court was pleased to issue direction for transfer of funds from the Trust to the Pension Scheme both in ***R.C.Gupta case*** and in ***Sunil Kumar case***. In the present case, instead of funds being transferred from the Trust, they are going to be remitted by the concerned employees. Therefore, such contention is liable to be rejected.

42.The circular issued by the respondents on 18.01.2025 cannot be a violation of the order passed by the Hon'ble Supreme Court in Sunil Kumar case. Hence, the same is liable to be set aside.

(E) Conclusion:

43.In view of the above said deliberations, this Court is inclined to pass the following orders:-

a)The orders impugned in the writ petitions are set aside. Any joint option application presented on or before 31.01.2025, shall be accepted by the respondents; and



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b)On remittance of the differential contribution amount to the pension scheme, to the Employees' Provident Fund Organisation, by the employees, along with applicable interest, higher pension shall be disbursed to them from the succeeding month of their remittance.

44.Accordingly, these Writ Petitions stand allowed to the extent as stated above. No costs. Consequently, connected miscellaneous petitions are closed.

02.09.2025

NCC : Yes/No
Index : Yes/No
Internet: Yes/No

To

1.Union of India,
Ministry of Labour and Employment,
Represented by Secretary,
Shram Shakti Bhawan, Rafi Marg,
New Delhi - 110 001.

2.The Central Provident Fund Commissioner,
The Employees' Provident Fund Organisation
Ministry of Labour and Employment,
Govt. of India, Bhavishya Nidhi Bhawan,
14, Bhikaji Cama Place, New Delhi - 110 066.

3.The Regional Provident Fund Commissioner,
The Employees' Provident Fund Organisation,
Ministry of Labour and Employment,
No.37, Royapettah High Road,
Azad Nagar, Royapettah, Chennai

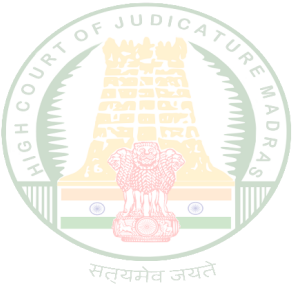
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4. The Regional Provident Fund Commissioner,
The Employees' Provident Fund Organisation,
Ministry of Labour and Employment,
P.B.No.588, Sree Complex 'D' Block
No.18, Madurai Road
Tiruchirappalli 620 008

5. Director (HR)
BHEL
“BHEL HOUSE”
Siri Fort
New Delhi 110 049



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W.P(MD)Nos.29573 to 29578 of 2024

R.VIJAYAKUMAR, J.

msa

Pre-delivery order made
in
W.P.(MD)Nos.29573 to 29578 of 2024
and
WMP(MD).Nos.24966, 24967, 24957,
24958, 24968,24970, 24965, 24969,
24984, 24963 and 24964 of 2024 and 4067 of 2025

02.09.2025